

§ 536.51

place of the incident giving rise to the claim will apply to claims arising in the United States, its commonwealths, territories and possessions prior to September 1, 1995. The general principles of U.S. tort law will apply to property damage or loss claims arising outside the United States prior to September 1, 1995. Established principles of general maritime law will apply to injury or death claims arising outside the United States prior to September 1, 1995. See *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970) and federal case law. Where general maritime law provides no guidance, the general principles of U.S. tort law will apply.

(c) *The Foreign Claims Act.* See subpart J of this part. The law of the place of occurrence applies to the resolution of claims. However, the law of damages set forth in § 536.139 will serve as a guide.

(d) *The Army Maritime Claims Settlement Act.* Maritime law applies.

(e) *Damages not payable.* Under all subparts, property loss or damage refers to actual tangible property. Accordingly, consequential damages, including, but not limited to bail, interest (prejudgment or otherwise), or court costs are not payable. Costs of preparing, filing, and pursuing a claim, including expert witness fees, are not payable. The payment of punitive damages, that is, damages in addition to general and special damages that are otherwise payable, is prohibited. See DA Pam 27-162, paragraphs 2-56 and 3-4b.

(f) *Source of attorney's fees.* Attorney's fees are taken from the settlement amount and not added thereto. They may not exceed 20 percent of the settlement amount under any subpart.

NOTE TO § 536.50: For further discussion see DA Pam 27-162, paragraph 2-51.

§ 536.51 Collateral source rule.

Where permitted by applicable state or maritime law, damages recovered from collateral sources are payable under subparts D and H, but not under subparts C, E, F, or J of this part. For further discussion see DA Pam 27-162, paragraph 2-57.

32 CFR Ch. V (7-1-09 Edition)

§ 536.52 Subrogation.

Subrogation is the substitution of one person in place of another with regard to a claim, demand or right. It should not be confused with a lien, which is an obligation of the claimant. Applicable state law should be researched to determine the distinction between subrogation and a lien. Subrogation claims are payable under subparts D and H, but not under subparts C, E, F or J of this part. For further discussion see DA Pam 27-162, paragraph 2-58.

§ 536.53 Evaluation of claims—general rules and guidelines.

(a) Before claims personnel evaluate a claim:

(1) A claimant or claimant's legal representative will be furnished the opportunity to substantiate the claim by providing essential documentary evidence according to the claim's nature including, but not instead of, the following: Medical records and reports, witness statements, itemized bills and paid receipts, estimates, federal tax returns, W-2 forms or similar proof of loss of earnings, photographs, and reports of appraisals or investigation. If necessary, request permission, through the legal representative, to interview the claimant, the claimant's family, proposed witnesses and treating health care providers (HCPs). In a professional negligence claim, the claimant will submit an expert opinion when requested. State law concerning the requirement for an affidavit of merit should be cited.

(2) When the claimant or the legal representative fails to respond in a timely manner to informal demands for documentary evidence, interviews, or an independent medical examination (IME), make a written request. Such written request provides notice to the claimant that failure to provide substantiating evidence will result in an evaluation of the claim based only on information currently in the file. When, despite the government's request, there is insufficient information in the file to permit evaluation, the claim will be denied for failure to document it. Failure to submit to an IME or sign an authorization to use medical information protected by HIPAA, for